

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

All Cases

MDL 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**FINAL ORDER REGARDING
ALLOCATION OF COMMON
BENEFIT AWARDS**

Before the Court are seven appeals from the Fee Panel's Final Recommended Allocation of Common Benefit Fee Awards.¹ Docket no. 5476. The Court has carefully reviewed: (1) the Fee Panel's comprehensive allocation process, exhaustive deliberations, and mathematical calculations; (2) all materials submitted by the appellants in pursuit of their objections, including their hearing transcripts; and (3) the appellants' briefs. The Court now concludes the appeal of Spangenberg, Shibley, & Liber is well-taken and is granted-in-part. The remaining appeals are all denied.

In July of 2021 and November and December of 2022, nine defendants reached global settlements with the subdivision plaintiffs. Each of these Master Settlement Agreements contained largely identical Exhibit Rs that set forth the parties' agreements on attorneys' fees, costs, and expenses.² In relevant part, Exhibit R provides for the creation, funding, and administration of an

¹ The seven firms that appealed the Fee Panel's final recommendations are: Crueger Dickinson LLC; Goldstein & Russell, P.C. and Kelley & Ferraro LLP (one appeal jointly submitted by both firms); Meyers & Flowers; Motley Rice; Spangenberg, Shibley, & Liber; Stranch, Jennings, and Garvey LLC; and Weisman Kennedy & Berris Co LPA.

² As was done in Fee Panel Order 32, the Court's order refers to "Exhibit R" in the singular, but the discussion applies to all such Exhibit Rs collectively.

Attorney Fee Fund, which includes a Common Benefit Fund. To accomplish these functions, Exhibit R provided for the appointment of a three-person Fee Panel and provided the Panel with guidelines for the funds' administration and eventual distribution. The Court then, in accordance with Exhibit R, appointed Judge David R. Herndon (ret.), Randi S. Ellis, and David R. Cohen as the three members of the Fee Panel. *See* docket no. 3828 at 8.

On April 1, 2022, the Court issued an Order Establishing Application Protocols for Reimbursement of Common Benefit Attorney's Fees Under the Janssen and Distributor Settlement Agreements. Docket no. 4344. This protocol order approved and adopted the Fee Panel's recommended processes and procedures for the allocation of Common Benefit Fees pursuant to Exhibit R.³ In relevant part, the Application Protocols provided that the Court would: (1) set forth a "process by which Fee Applicants may appeal to the Court the final fee allocation recommendation of the Fee Panel," (2) review "any appeal of the Fee Panel's final fee allocation recommendation . . . under an abuse of discretion standard," and (3) have "plenary authority regarding the awarding of common benefit attorneys' fees." *Id.* at 11. The appeal process was provided to appellants in a subsequent order. *See* docket no. 5479.

The Court first offers its thanks to the Fee Panel for the extraordinary job it has done. The Fee Panel predicted that "in all probability [the final fee award] decision will be totally satisfactory to no one." Docket no. 5476-1 (quoting *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 720 (5th Cir. 1974)). Perhaps this is true, but only 7 of the 97 Common Benefit Fee Applicants appealed the Panel's recommendations to this Court. This makes manifest the ultimate reasonableness, fairness, and equity of the Panel's methods and results. Having reviewed the

³ Initially, this Order applied only to the Distributor and Janssen Settlement Agreements. When the next five global settlement agreements were reached in November and December of 2022, the Court directed the established protocols be applied to those settlements as well. *See* docket no. 5090 at 4–5.

enormous amounts of information the Panel collected, the intricate and complex weighing processes the Panel undertook, and the careful interim and final decisions the Panel made, the Court is certain the ultimate results are fine-tuned and just.

Turning now to the appeals, the Court agrees with the Fee Panel's recommendations with respect to all but one of the appellants. The Court finds only the appeal of Spangenberg, Shibley, & Liber well-taken. The Court has, therefore, increased the award amount to this firm, but not to the extent sought in their appeal. Spangenberg attorney Peter H. Weinberger's overall contribution and leadership have been incalculable and irreplaceable to this MDL.

Mr. Weinberger has made valuable, substantive contributions at virtually every conference, hearing, and proceeding before this Court. Time and again, he has proven himself to be deeply knowledgeable in all aspects of this MDL, and the Court is convinced that without his leadership and guidance on the PEC, this MDL, among the most complicated in our nation's history, would not have produced these global settlements.

The starting point for the Fee Panel's recommendation was, of course, the lodestar: the number of true common benefit hours each firm billed, multiplied by a suitable hourly rate based upon the experience of counsel. Spangenberg's billed hours were far fewer than many of the other leading firms. In addition, as compared to other leading firms, a disproportionate number of Spangenberg's hours was billed by one attorney, Mr. Weinberger. Mr. Weinberger accounted for approximately two-thirds of common benefit hours billed by all attorneys at his firm. Further, another important consideration for the Court is the fact that, unlike many other leading firms, Spangenberg is receiving relatively little in compensation from any other source besides common benefit (*e.g.*, contingency fees or backstops).

The Court also finds noteworthy that Mr. Weinberger's efforts to appeal his common benefit award has the support of many members of the PEC. This is particularly persuasive to the Court given that their support is effectively a statement against interest—any increase to Spangenberg's award will necessarily come out of their own. The Court believes Mr. Weinberger has demonstrated that his efforts are worthy of some additional compensation, but not the full amount contemplated in his appeal.

Finally, the Court adds the following observation. Exhibit R, in the Master Settlement Agreements, has proven to be reasonable, fair, and equitable. Exhibit R was negotiated by numerous individuals, including various members of the PEC, the Multi-State Government Entity group (MSGGE), and State Attorneys General. These different counsel factions agreed to abide by decisions of the Fee Panel, to the membership of the Panel, and to the factors the Panel should weigh.

Since then, the Defendants, the PEC, the States, and the Tribes relied on this system as a critical component to successfully reach master settlement agreements worth approximately fifty billion dollars. The Fee Panel is now uniquely and best positioned to continue to evaluate further common benefit efforts. It makes little sense to abandon this approach and design something different—and likely to be equally unsatisfying—for future deals. The Court strongly believes the Fee Panel model should be maintained for future settlements, and all parties should continue to rely on the established system as they negotiate additional resolutions.

Accordingly, the Court orders the Fee Panel to direct disbursement of Common Benefit Funds in accordance with the chart below.

IT IS SO ORDERED.

/s/ Dan Aaron Polster July 11, 2024
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Rubris Claim No.	Firm	Final Award
CL-162475	Andrus Anderson, LLP	0.3089078%
CL-163974	Baird, Mandalas, Brockstedt Federico Cardea, LLC	0.0037667%
CL-166272	Bertram & Graf, L.L.C.	0.0016698%
CL-162481	Blasingame, Burch, Garrard & Ashley, PC	0.0228822%
CL-162565	Boies Schiller Flexner LLP	0.2397896%
CL-162684	Boni, Zack & Snyder, LLC	0.0000000%
CL-163969	Brown Rudnick LLP	0.0747140%
CL-166364	Bryant Law Center	0.0000000%
CL-162575	Carella, Byrne, Cecchi, Olstein, Brody & Agnello P.C.	1.7320715%
CL-162436	Carey Danis & Lowe	0.1505380%
CL-162476	Casey Gerry Schenk Francavilla Blatt & Penfield LLP	0.0751649%
CL-166361	Cates Law Firm, LLC	0.0000000%
CL-163666	Chadwick and Associates, PLLC	0.0003443%
CL-162577	Cicala Law Firm PLLC	0.2318814%
CL-162438	Cohen & Malad, LLP	0.1510577%
CL-163664	Cohen Milstein Sellers & Toll PLLC	0.2850381%
CL-162681	Crueger Dickinson, LLC	1.1337668%
CL-166362	Danenhower Law Firm, LLC	0.0000000%
CL-166271	Dewsnup, King, Olsen, Worel, Havas, Mortensen, Milne	0.0000000%
CL-164963	Dicello, Levitt, Gutzler	0.0000000%
CL-166274	Dugan Law Firm	0.2817554%
CL-162432	Fields Han Cuniff PLLC	0.0975073%
CL-162437	Fitzsimmons Law Firm, PLLC	0.1827537%
CL-166294	Frazer PLC	0.1741979%
CL-164721	Friedman, Dazzio & Zulas, P.C.	0.0000000%
CL-163667	Gilbert LLP	0.2246521%
CL-163972	Goldstein & Russell, P.C.	0.0000000%
CL-163971	Gray and White	0.2036872%
CL-166273	Hagens Berman Sobol Shapiro LLP	0.1624112%
CL-162490	Hendy Johnson Vaughn Emery	0.0160135%
CL-163962	Henrichsen Law Group	0.0004132%
CL-166201	Hobbs Straus Dean & Walker, LLP	0.1734952%
CL-163970	Holland Law Firm	0.0094925%
CL-163539	Irpino Law Firm	2.2188777%
CL-166276	Jinks, Crow & Dickson	0.0179914%
CL-166385	John Young Law Firm	0.0024356%
CL-162474	Kaufman & Canoles, P.C.	0.0316750%
CL-163968	Keating Muething & Klekamp PLL	0.0517968%
CL-162480	Keller Postman LLC	0.0059230%
CL-162309	Keller Rohrback L.L.P.	2.9528010%
CL-162431	Kopelowitz Ostrow Ferguson Weiselberg Gilbert	0.0269589%
CL-166293	Laborde Earles Law Firm	0.0141724%
CL-165902	Lanier Law Firm	4.9489527%
CL-581156	Law Offices of Travis R. Walker, P.A.	0.0000000%
CL-163963	Leger & Shaw	0.0248549%
CL-162608	Levin Sedran & Berman	0.0000000%
CL-163554	Lieff Cabraser Heimann & Bernstein, LLP	5.5699374%
CL-166200	Magleby Cataxinos & Greenwood	0.0000000%
CL-166258	Matthew Cate	0.0000000%
CL-162693	Mehri & Skalet	0.0000000%
CL-163967	Meyers & Flowers, LLC	0.0000000%
CL-162571	Milberg Coleman Bryson Phillips Grossman, LLC	0.0049237%
CL-163957	Miller Law Firm, P.C.	0.5416192%

Rubris Claim No.	Firm	Final Award
CL-166261	Mitchell & Speights LLC	0.0000000%
CL-163668	Mooney Wieland PLLC	0.0000000%
CL-162683	Morgan & Morgan Complex Litigation Group	2.2105724%
CL-171482	Moskowitz Law Firm, PLLC	0.0000000%
CL-162308	Motley Rice LLC	18.6091362%
CL-163537	Napoli Shkolnik, PLLC	8.3150460%
CL-162497	National Consortium ¹	11.3285056%
CL-162570	Ochs Law Firm, LLP	0.0144716%
CL-163960	Oths, Heiser, Miller, Waigand & Clagg, LLC	0.0004123%
CL-166275	Phipps Ortiz Talafuse, PLLC	0.0000000%
CL-163964	Plevin & Gallucci Co, LPA	0.6306453%
CL-166277	Prince, Glover & Hayes	0.0035827%
CL-163538	Renne Public Law Group	0.0097101%
CL-162435	Robbins Geller Rudman & Dowd LLP	8.0571280%
CL-162439	Robins Kaplan LLP	0.7118164%
CL-162312	Robinson Calcagnie, Inc.	0.7238127%
CL-164038	Robles, Rael & Anaya P.C.	0.0000000%
CL-165031	Romano Law Group	0.0000000%
CL-163954	Sam Bernstein Law Firm PLLC	0.0168077%
CL-163549	Sanford Heisler Sharp, LLP	0.0079670%
CL-162498	Scott & Scott Attorneys at Law, LLP	0.0840018%
CL-163973	Seeger Weiss LLP	3.2560924%
CL-163961	Seif & McNamee, LLC	0.0011658%
CL-162430	Simmons Hanly Conroy, LLC	11.3004162%
CL-162434	Skikos, Crawford, Skikos & Joseph	3.8474125%
CL-166363	Smith & Fawer, LLC	0.0000000%
CL-162310	Sonosky, Chambers, Sachse, Miller, & Monkman, LLP	0.7250574%
CL-162473	Spangenberg Shibley & Liber	3.0000000%
CL-163557	Stranch, Jennings & Garvey, PLLC	0.6474710%
CL-166292	Taft Stettinius & Hollister LLP	0.0559475%
CL-162682	Tate Law Group, LLC.	0.0057441%
CL-172149	Texas PSC 1	0.8470293%
CL-163959	von Briesen & Roper, s.c.	0.0061794%
CL-164026	Wagstaff & Cartmell, LLP	0.6709014%
CL-162433	Weisman Kennedy & Berris Co., LPA	1.1711449%
CL-162313	Weitz & Luxenberg, P.C.	0.8744816%
CL-162576	Wexler, Boley & Elgersma LLP	0.3198118%
CL-166287	Woelfel & Woelfel, LLP	0.0735842%
CL-164027	Zarzaur Law, LLC	0.0788660%
CL-162477	Zashin & Rich	0.0441871%

¹ The National Consortium is comprised of the following firms: Baron & Budd; Farrell & Fuller LLC; Hill, Peterson, Carper, Bee & Deitzler, PLLC; Levin, Papantonio, Rafferty, Proctor, Buchanan, O'Brien, Barr and Mougey, P.A; and Powell & Majestro, PLLC. These firms agreed to receive a single award, to be split amongst them according to their own agreement.